

cc mag. Judge Blewitt

(103)

3/18/02
KF

MCC:JJT:mel:2001V00126

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF PENNSYLVANIAJOHN CHARLES KENNEY,
Plaintiff

v.

:
:
:
Civil No. 1:CV-00-2143
(McClure, J.)
(Blewitt, M.J.)JAKE MENDEZ;
JESUS "JESSE" GONZALEZ;
JAMES "JIMMY" SCARBOROUGH; and
KELLY M. KEISER,
DefendantsFILED
WILLIAMSPORT, PA

MAR 18 2002

BRIEF IN OPPOSITION TO
PLAINTIFF'S MOTION FOR TRIAL BY JURYMARV E. D'ANDREA, CLERK
KF
Deputy ClerkI. Procedural History

This Bivens action was filed by plaintiff John Charles Kenney on December 12, 2000. Defendants' motion for judgment on the pleadings is presently pending before the Court.

On February 22, 2002, and March 5, 2002, Kenney filed a motion and supporting brief, respectfully, requesting a jury trial pursuant to 28 U.S.C. § 3901(b). This brief is submitted in opposition to that motion.

II. Question Presented

Should Kenney's motion be denied as 28 U.S.C. § 3901 provides for a jury trial in actions against the United States of America?

Suggested answer in the affirmative.

III. Argument

Kenney requests the Court for a trial by jury in this case pursuant to 28 U.S.C. § 3901(b). Section 3901(b) was one of the amendments made to Title 28 of the United States Code by the Presidential and Executive Office Accountability Act, "[a]n Act to make certain laws applicable to the Executive Office of the President, and for other purposes." Pub. Law 104-331, October 26, 1996, 110 Stat 4053. Section 3901 pertains only to actions filed under § 1346(g), where the United States of America is named as a defendant.

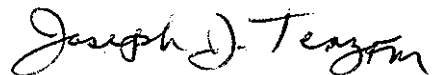
In the present action, the only defendants named by Kenney are employees of the Bureau of Prisons sued in their individual capacities. The United States of America is not a defendant.

IV. Conclusion

For the foregoing reasons, Kenney's motion for a trial by jury should be denied.

Respectfully submitted,

MARTIN C. CARLSON
United States Attorney



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Assistant U.S. Attorney
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316 Federal Building
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Williamsport, PA 17703

Date: March 18, 2002

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF PENNSYLVANIA

JOHN CHARLES KENNEY,	:	
Plaintiff	:	
	:	
v.	:	Civil No. 1:CV-00-2143
	:	(McClure, J.)
JAKE MENDEZ;	:	(Blewitt, M.J.)
JESUS "JESSE" GONZALEZ;	:	
JAMES "JIMMY" SCARBOROUGH; and	:	
KELLY M. KEISER,	:	
Defendants	:	

CERTIFICATE OF SERVICE

The undersigned hereby certifies that she is an employee in the Office of the United States Attorney for the Middle District of Pennsylvania and is a person of such age and discretion to be competent to serve papers.

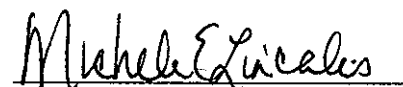
That this 18th day of March 2002, she served a copy of the attached

BRIEF IN OPPOSITION TO
PLAINTIFF'S MOTION FOR TRIAL BY JURY

by placing said copy in a postpaid envelope addressed to the person hereinafter named, at the place and address stated below, which is the last known address, and by depositing said envelope and contents in the United States Mail at Williamsport, Pennsylvania.

ADDRESSEE:

John Charles Kenney
Reg. No. 05238-041
U.S. Penitentiary
P.O. Box 3000
White Deer, PA 17887


MICHELE E. LINCALIS
Paralegal Specialist